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Misha Ray

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NEVADA RULES OF CIVIL PROCEDURE

Summary

In a matter of first impression for the Nevada Supreme Court, the Court determined that, generally, a defendant is considered a prevailing party in a voluntary dismissal with prejudice. However, the Court declines to apply this rule universally and permits courts to consider the circumstances surrounding a voluntary dismissal with prejudice.

Background

In 2016, the trustee ("Trust") of a condominium in The Signature at MGM Grand sued multiple MGM entities, including respondent ("Association"), regarding mold damage in the unit that required significant repair. In August of that year, the Association requested dismissal from the case, via demand letter to the Trust, because they were not a proper party in the case. In September, the Association followed-up with the Trust by email to say that even though they had agreed by phone to be removed in late August, they had still not seen the dismissal. The Trust responded to say they were "swamped," and do so upon returning to the country two weeks later.

By December 2016, the Trust had still not dismissed the Association, and the Association followed up by email to inquire whether they would need to file a motion to dismiss and request sanctions. The Trust responded to say that a substitution of attorney had been filed the preceding week, and to speak with that attorney. The new attorney was given the August demand letter, and responded that he would review the claims and discuss the matter later. However, communication between the Trust and Association did not continue. The Trust did not dismiss the Association, and the Association did not make further demands. The Association was not asked for discovery in the case, and the Trust pursued the case with the other defendants, resulting in a confidential settlement.

In March 2017, before the settlement, the Association moved to dismiss, or for summary judgment, alternatively. The Trust did not respond, but instead the parties stipulated to dismiss the Association with prejudice, expressly preserving the Association's right to submit a motion for attorney's fees. When the Association did move for attorney fees, the Trust opposed the motion, arguing the Association was not a prevailing party for the purposes of NRS 18.010(2) and NRS 18.020 because the case had not proceeded to judgment. The district court heard the motion and found on behalf of the Association, stating that not only did the parties stipulate to dismissing the Association with prejudice, but that the Association likely would have succeeded on their motion for summary judgment, and awarded attorney fees to the Association as the prevailing party. The Trust appealed.

[1] By Misha Ray.

Discussion

I. *The district court correctly determined that the Association was a prevailing party*

While the Court has not answered the question of whether a defendant is a prevailing party in a dismissal with prejudice, it finds the federal authority to be persuasive. Agreeing with the Fifth, Second, Ninth and Seventh Circuits on the issue, the Court finds that a voluntary dismissal with prejudice is equivalent to an adjudication on the merits, even if the action has not proceeded to judgment, because the result is an altered legal relationship between the parties for purposes of *res judicata*.[2] In making this decision, the Court also clarifies its earlier decision in *Works v. Kuhn*—which indicated that a party does not prevail unless the matter proceeds to judgment—to say that their position in that case was *not* to mandate that when a case is dismissed with prejudice, it has not proceeded to judgment.[3]

Despite holding in this case that the defendant Association is the prevailing party from the dismissal with prejudice, the Court does not extend this as an absolute rule, and rather permits courts to consider the circumstances surrounding a dismissal with prejudice before making such a determination. Some instances, the Court reasons, may not necessarily lead to a finding that the defendant is the prevailing party, such as when a plaintiff has a strong case in their favor, but is unable to incur litigation costs and instead stipulates to a dismissal.

II. *The district court did not abuse its discretion in awarding attorney's fees*

The Court finds the district court did not abuse its discretion in its award of attorney fees in this case, and that it properly analyzed the four *Brunzell* factors for attorney fee calculations.[4] The Court reiterated that the district court is not required to make "express findings on each factor" as long as the record shows the court "considered the required factors" and that the award is "supported by substantial evidence."[5] Here, the Court determines that the record substantially supported the award, and that the lower court considered each factor in making its determination for the Association.

Conclusion

Here, the defendant Association is the prevailing party in the voluntary dismissal with prejudice because plaintiff Trust failed to do its due diligence prior to the Association's dispositive motion, on which they were likely to prevail. Additionally, the parties stipulated that the Association reserved the right to move for fees. The district court did not abuse its discretion in its award of attorney fees, as the record substantially supported the award. Affirmed.

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[2] See Anthony v. Marion Cty. Gen. Hosp., 617 F.2d 1164, 1169-70 (5th Cir. 1980); Carter v. Inc. Vill. of Ocean Beach, 759 F.3d 159, 165 (2d Cir. 2014); Cadkin v. Loose, 569 F.3d 1142, 1148 (9th Cir. 2009); Szabo Food Serv., Inc. v. Canteen Corp., 823 F.2d 1073, 1076–77 (7th Cir. 1987).

[3] Works v. Kuhn, 103 Nev. 65, 732 P.2d 1373 (1987).

[4] Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 33 (1969).

[5] Logan v. Abe, 131 Nev. at 266, 350 P.3d at 1143.